

Robert F. McCauley (SBN 162056)
 robert.mccauley@finnegan.com
 Arpita Bhattacharyya (SBN 316454)
 arpita.bhattacharyya@finnegan.com
 Jeffrey D. Smyth (SBN 280665)
 jeffrey.smyth@finnegan.com
**FINNEGAN, HENDERSON, FARABOW,
 GARRETT & DUNNER, LLP**
 3300 Hillview Avenue
 Palo Alto, California 94304
 Telephone: (650) 849-6600
 Facsimile: (650) 849-6666

*Attorneys for Plaintiff and Counterdefendant
 ASETEK DANMARK A/S*

Heidi L. Keefe (SBN 178960)
 hkeefe@cooley.com
 Reuben H. Chen (SNB 228725)
 rchen@cooley.com
 Daniel J. Knauss (SBN 267414)
 dknauss@cooley.com
 Lam K. Nguyen (SNB 265285)
 lnguyen@cooley.com
 Deepa Kannappan (SBN 313573)
 dkannappan@cooley.com
 Alexandra Leeper (SBN 307310)
 aleeper@cooley.com

COOLEY LLP
 3175 Hanover Street
 Palo Alto, CA 94304-1130
 Telephone: (650) 843-5000
 Facsimile: (650) 849-7400

**additional attorneys listed in signature block*

*Attorneys for Defendant and Counterclaimant
 COOLIT SYSTEMS, INC., and Defendants
 COOLIT SYSTEMS USA INC., COOLIT
 SYSTEMS ASIA PACIFIC LIMITED, COOLIT
 SYSTEMS (SHENZHEN) CO., LTD., CORSAIR
 GAMING, INC. and CORSAIR MEMORY, INC.*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

ASETEK DANMARK A/S,

Plaintiff and
 Counterdefendant,

v.

COOLIT SYSTEMS, INC.,

Defendant and
 Counterclaimant,

COOLIT SYSTEMS USA INC., COOLIT
 SYSTEMS ASIA PACIFIC LIMITED, COOLIT
 SYSTEMS (SHENZHEN) CO., LTD.,

Defendants,

CORSAIR GAMING, INC. and CORSAIR
 MEMORY, INC.,

Defendants.

CASE NO. 3:19-cv-00410-EMC

**JOINT STATEMENT REGARDING THE
 PARTIES' PROPOSALS FOR THE
 REMAINDER OF THIS CASE**

At hearing in this matter on October 7, 2021, the Court continued the jury trial in this case until July 25, 2022. The Court asked when decisions on whether to institute IPRs on the '601 and '196 patents would issue. Institution Decisions are expected by December 30, 2021. The Court then directed counsel for the parties to meet and confer regarding potential dates for the remaining case schedule, and to file a paper regarding same by October 8, 2021. Counsel for the parties (Plaintiff Asetek Danmark A/S ("Asetek") and Defendants CoolIT Systems, Inc., CoolIT Systems USA Inc., CoolIT Systems Asia Pacific Limited, CoolIT Systems (Shenzhen) Co., Ltd., Corsair Gaming, Inc. and Corsair Memory, Inc. (collectively, "Defendants")) have met and conferred and have not reached an agreement regarding the remainder of the schedule.

In the table below, the parties submit the existing case schedule, the parties' respective proposals for a new case schedule, as well as their further comments below the table.

Event	Current Date	Asetek Proposed Dates (Option I)	Asetek Proposed Dates (Option II)	CoolIT Proposed Dates
Rebuttal Expert Reports	October 21, 2021	No change - Oct. 21, 2021 (Asetek's counsel in India Oct. 15-30)	No change - Oct. 21, 2021 (Asetek's counsel in India Oct. 15-30)	December 15, 2021
Expert Discovery Cut-Off	November 11, 2021	November 23, 2021	December 23, 2021	January 13, 2022
Deadline to File Dispositive Motions	November 18, 2021	December 7, 2021	January 20, 2022	
Case Status Conference		February 1, 2022 at 2:30 pm	February 1, 2022 at 2:30 pm	
Deadline to File Oppositions to Dispositive Motions	December 2, 2021	December 21, 2021	February 10, 2022	
Deadline to File Replies to Dispositive Motions	December 9, 2021	January 6, 2022 (three weeks before hearing)	February 17, 2022	
Last Day to Hear Dispositive Motions	December 23, 2021	January 27, 2022	March 3, 2022	
Meet and Confer re Pretrial Conference Statements	January 25, 2022	May 17, 2022	May 17, 2022	
Joint Pretrial Conference Statement/Trial Briefs	February 15, 2022	June 7, 2022	June 7, 2022	

Objections Due	February 25, 2022	June 17, 2022	June 17, 2022	
Pretrial Conference	April 12, 2022	June 28, 2022	June 28, 2022 at 2:30 p.m.	
Trial	May 9, 2022	July 25, 2022	July 25, 2022	
Estimate of Trial Length (in Days)	10-12 Court Days			

Asetek's Comments

Asetek has submitted two Options for the schedule based on the parties' differing recollections about when the Court stated a preference for the hearing on dispositive motions; Options One and Two are discussed further below.

All expert reports are nearly complete; rebuttal expert reports are due on October 21, 2021 per the Court's order. The parties are thus nearly across the Rubicon and extending that deadline will create inefficiencies. As explained to Defendants months ago, Asetek's counsel most familiar with the technical issues and working with its experts, Arpita Bhattacharyya, will be in India from October 15-30, 2021, to attend ceremonial services for her deceased father and to tend to family estate issues. She will not have a reliable internet connection while there. As a result, Asetek has long planned to have its technical expert reports all but completed by October 14 (next Thursday), even though Defendants will have the advantage of an extra week to complete their rebuttal reports. (During negotiations about the schedule, Asetek requested in the interest of reciprocity and fairness that Defendants agree to a mutual deadline for expert reports of October 14, but Defendants refused.) Asetek believes October 21 deadline for rebuttal expert reports should remain. That said, Asetek is open to extending the date for expert depositions, as requested by Defendants, by two or six weeks in Options One and Two.

Regarding Asetek's schedule Options One and Two, Asetek's counsel thought Judge Chen said at this week's hearing that the Court would prefer the dispositive motions hearing be scheduled for the end of January 2022. (Perhaps that is the Court's preference because of the long criminal trial beginning in mid-March 2022.) Asetek's Option One is based on that assumption.

1 Defendants' counsel does not recall the Court stating a preference for the dispositive motions
2 hearing to be held at the end of January, but instead that opening briefs on dispositive motions could
3 be filed in January 2022. If that is the Court's preference, Asetek's Option Two follows that
4 assumption and sets the dispositive motion hearing on March 3, 2022, which will allow the Court to
5 prepare for and hear the dispositive motions before beginning the long criminal trial. Option Two
6 also requires expert depositions to be concluded by December 23, 2021, before the holidays, so that
7 dispositive motions can be completed and filed in January 2022.

8 Asetek objects to Defendant's proposal to extend expert depositions through January 13, with
9 dispositive motions filed on January 20, because it would ruin the holidays and only gives the parties
10 one week between the end of expert depositions and filing dispositive motions. Defendants have
11 continually sought delays and if their schedule is entered they will no doubt refuse to produce expert
12 witnesses until January, and likely not until the week of January 10, and cause a log jam with expert
13 depositions and drafting/filing dispositive motions on January 20.

14 Below, Defendants rehash disputed points they raised in their motion to stay that was denied
15 this week. Defendants continue to prematurely count their chickens in contending the PTAB will
16 institute their IPRs on the '196 and '601 patents, but there are multiple reasons for the PTAB to deny
17 those IPRs that will not be repeated here for the sake of brevity. Defendants' argument about the
18 terminal disclaimer submitted by Asetek to obtain allowance of the patents is off base. The Federal
19 Circuit has recognized that terminal disclaimers are routinely submitted to expedite prosecution
20 without conceding any allegation of obviousness type double patenting (OTDP), as was done here,
21 and such disclaimers to obtain issuance do not create any presumption of ODTP.

22 Defendants' argument that they need to depose Asetek's experts before filing rebuttal expert
23 reports, which was never discussed or agreed upon when the parties agreed upon the existing expert
24 discovery schedule, is groundless and yet another stall tactic. Defendants never even broached the
25 possibility of taking expert depositions before serving rebuttal expert reports until yesterday at the
26 hearing, and they never requested dates that Asetek's expert witnesses might be available for
27 deposition before the October 21 deadline for expert reports, as they would have done shortly after
28 service of the opening expert reports three weeks ago, on September 16, if that had in fact been the

1 parties' agreement. Tellingly, when the parties negotiated the expert discovery schedule earlier in the
 2 case, *both sides checked and confirmed that their experts would be available for deposition after*
 3 *the rebuttal expert reports were served - there was no discussion of any depositions between the*
 4 *opening and rebuttal rounds of expert reports.* Furthermore, Defendants have long known that that
 5 Asetek's counsel, Arpita Bhattacharyya, will need to prep and defend Asetek's technical expert
 6 depositions and that she will be leaving the country next Friday, yet they never even mentioned the
 7 possibility of depositions on the first round of expert reports until the hearing yesterday.

8 Defendants' arguments about their requests for additional data supporting Asetek's
 9 simulation expert are also disputed, without merit, and interposed in an attempt to excuse their
 10 requests for further delays. Pursuant to Defendants' request, on October 1 Asetek produced to them
 11 the CAD and mesh files used by Asetek's simulation expert, with which Defendants' expert could
 12 run his own analysis. Earlier this week, Asetek further provided to Defendants all data/inputs and
 13 parameters used by Asetek's simulation expert to run his simulation, with which Defendants can
 14 further check and verify the results obtained by Asetek's expert. Asetek also explained that it is also
 15 willing to produce the simulation case files (.sim files) created by Asetek's expert, which are his
 16 work product, provided that Defendants agree to expressly state in their expert's rebuttal report any
 17 and all changes he may make to Asetek's expert's .sim files in creating his own modified simulation.

18 CoolIT's and Corsair's Comments

19 The parties have agreed to a schedule for summary judgment briefing through trial, provided
 20 the Court is amenable to summary judgment briefing that begins on January 20, 2022. The agreed
 21 upon summary judgment schedule will also facilitate the parties' participation in settlement conference
 22 before summary judgment briefing begins. Both parties have agreed in principle to a settlement
 23 conference in January 2022. If the Court adopts the parties' agreed schedule for summary judgment
 24 through trial, the only disputed dates are for rebuttal expert reports and close of expert discovery.

25 Rebuttal Expert Reports and Expert Discovery Cut-Off

26 If the PTAB institutes the IPRs on the '601 and '196 child patents, CoolIT and Corsair will
 27 renew their stay motion. The PTAB is required to issue its decision by December 30, 2021, but the
 28 PTAB can also issue its decision earlier and sometimes does so by a month. CoolIT and Corsair would

1 prefer to schedule rebuttal expert reports after the deadline for institution, but, as a compromise,
 2 Defendants have proposed December 15, 2021 which will support the remainder of the case schedule,
 3 while giving CoolIT and Corsair a realistic possibility of obtaining an institution decision before the
 4 rebuttal expert report deadline. This would conserve resources spent on the rebuttal expert reports and
 5 rebuttal expert depositions for claims that are almost identical to the already-invalidated claims of the
 6 '354 and '355 patents. The near identical claim scope is further evidenced by the obviousness-type
 7 double patenting rejections that were issued during original prosecution of the '601 and '196 patents
 8 and that were only overcome by the filing of terminal disclaimers to the expiration dates of the '354
 9 and '355 patents.

10 Two additional reasons exist for moving the rebuttal expert report deadline to December 15,
 11 2021 and the expert discovery cut-off to January 13, 2022:

12 (1) CoolIT believes that its rebuttal experts should be allowed to consider the deposition
 13 testimony of Asetek's opening experts, and never agreed to the contrary.¹ CoolIT and Corsair learned
 14 for the first time today that Asetek's counsel will not allow the depositions of Asetek's opening experts
 15 to take place until after CoolIT's rebuttal expert reports are served, which would be prejudicial to
 16 CoolIT. During the parties' meet and confer today, Ms. Bhattacharyya stated that she was the only
 17 person on the team that could defend the expert depositions and that she does not have time to do that
 18 before she leaves on her trip to India. CoolIT's proposed December 15 date would alleviate this issue
 19 since Ms. Bhattacharyya returns from her trip on October 30, well in advance of December 15.

20 (2) On September 16, Asetek served an expert report that presented opinions on a *simulation*
 21 of CoolIT's impeller blades, but Asetek failed to serve with its report any of the simulation files and
 22 data used by its expert. CoolIT requested production of all relevant files, including the key .sim files.
 23 Asetek produced some of the data this week, but still has not produced the key .sim files. CoolIT's
 24 rebuttal expert needs those files to perform his analysis. The delay in providing this information is

26
 27 ¹ In response to a request from Asetek's counsel to accommodate Ms. Bhattacharyya's trip,
 28 Defendants, in an August 3, 2021 email, "agree[d] with scheduling technical expert depositions for
 rebuttal reports between Nov. 2-11." This agreement was specific to rebuttal reports and was not
 intended to alter the normal course of expert discovery and expert depositions following opening
 reports in patent cases.

1 prejudicial to CoolIT, but this would be alleviated by moving the rebuttal expert report deadline to
2 December 15, 2021, assuming Asetek produces the .sim files.

3
4
5 Dated: October 8, 2021

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

6
7 By: /s/ Robert F. McCauley
Robert F. McCauley

8 Robert F. McCauley (SBN 162056)
9 robert.mccauley@finnegan.com
10 Arpita Bhattacharyya (SBN 316454)
arpita.bhattacharyya@finnegan.com
11 Jeffrey D. Smyth (SBN 280665)
jeffrey.smyth@finnegan.com
12 **FINNEGAN, HENDERSON, FARABOW,**
13 **GARRETT & DUNNER, LLP**
3300 Hillview Avenue
Palo Alto, California 94304
Telephone: (650) 849-6600
14 Facsimile: (650) 849-6666

15 *Attorneys for Plaintiff and Counterdefendant*
16 *ASETEK DANMARK A/S*

17 Dated: October 8, 2021

18 COOLEY LLP/ GREENBERG TRAURIG, LLP /
DICKINSON WRIGHT RLLP

19
20 By: /s/ Reuben H. Chen
Reuben H. Chen

21 Heidi L. Keefe (SBN 178960)
hkeefe@cooley.com
22 Reuben H. Chen (SNB 228725)
rchen@cooley.com
23 Daniel J. Knauss (SBN 267414)
dknauss@cooley.com
24 Lam K. Nguyen (SNB 265285)
lnguyen@cooley.com
25 Deepa Kannappan (SBN 313573)
dkannappan@cooley.com
26 Alexandra Leeper (SBN 307310)
aleeper@cooley.com
27 **COOLEY LLP**
3175 Hanover Street
28 Palo Alto, CA 94304-1130
Telephone: (650) 843-5000

Facsimile: (650) 849-7400

Dustin M. Knight (*pro hac vice*)
dknight@cooley.com

COOLEY LLP

11951 Freedom Drive, 16th Floor

Reston, VA 20190

Telephone: (703) 456-8000

Facsimile: (703) 456-8100

*Attorneys for Defendant and Counterclaimant
COOLIT SYSTEMS, INC. and Defendants COOLIT
SYSTEMS USA INC., COOLIT SYSTEMS ASIA
PACIFIC LIMITED, COOLIT SYSTEMS
(SHENZHEN) CO., LTD., CORSAIR GAMING,
INC. and CORSAIR MEMORY, INC.*

Kyle D. Chen (SBN 239501)

kchen@gtlaw.com

GREENBERG TRAURIG, LLP

1900 University, Avenue, 5th Floor

East Palo Alto, CA 94304

Telephone: (650) 289-7887

Facsimile: (650) 328-8508

*Attorneys for Defendant and Counterclaimant
COOLIT SYSTEMS, INC.*

Kenneth J. Dyer (SBN 191192)

KDyer@dickinsonwright.com

DICKINSON WRIGHT RLLP

800 West California Avenue, Suite 110

Sunnyvale, CA 94086

Telephone: (408) 701-6170

Facsimile: (884) 670-6009

*Attorneys for Defendant and Counterclaimant
COOLIT SYSTEMS, INC. and Defendants COOLIT
SYSTEMS USA INC., COOLIT SYSTEMS ASIA
PACIFIC LIMITED, COOLIT SYSTEMS
(SHENZHEN) CO., LTD.*

ATTESTATION

Counsel for Asetek Danmark A/S hereby attests by his signature below that concurrence in the filing of this document was obtained from counsel for CoolIT Systems, Inc., CoolIT Systems USA Inc., CoolIT Systems Asia Pacific Limited, CoolIT Systems (Shenzhen) Co., Ltd., Corsair Gaming, Inc., and Corsair Memory, Inc.

Dated: October 8, 2021

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP

By: /s/ Robert F. McCauley

Robert F. McCauley
Attorneys for Plaintiff and Counterdefendant
ASETEK DANMARK A/S